

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

EVOLUTIONARY INTELLIGENCE, LLC	§	
	§	
V.	§	No. 6:12CV783
	§	
APPLE, INC.	§	

EVOLUTIONARY INTELLIGENCE, LLC	§	
	§	
V.	§	No. 6:12CV784
	§	
FACEBOOK, INC.	§	

EVOLUTIONARY INTELLIGENCE, LLC	§	
	§	
V.	§	No. 6:12CV792
	§	
TWITTER, INC.	§	

ORDER

Before the Court is the following pending motion: Plaintiff's Motion for Reconsideration and Objections to Magistrate's Order Denying Leave to File Amended Complaints (6:12-cv-783, Doc. No. 79; 6:12-cv-784, Doc. No. 83; 6:12-cv-792, Doc. No. 67). The Court has reviewed the relevant briefing and is of the opinion the motion should be **DENIED**.

In her May 28, 2013 Order denying Plaintiff Evolutionary Intelligence, LLC's motion for leave to amend to add nine additional defendants in the above cases, the Magistrate Judge provided the following reasons for the decision: (1) Plaintiff had failed to explain its more than five-month delay in seeking leave to add the proposed defendants until after Defendants Apple, Inc., Facebook, Inc., and Twitter, Inc. had filed their transfer motions; (2) the interests of justice

and judicial economy would not be served by allowing Plaintiff leave to amend because further delay would be unduly prejudicial to Defendants; and (3) Plaintiff's proposed amendment was futile because Plaintiff failed to show its claims against the proposed defendants satisfy the joinder requirements of the America Invents Act ("AIA"). Plaintiff's motion for reconsideration addresses only the third of these reasons. Specifically, Plaintiff asserts the Magistrate Judge interpreted the AIA so narrowly that leave to amend was denied even though all of the proposed defendants are alleged to infringe the patents using the same accused products as the original defendants. According to Plaintiff, the proposed defendants infringe by using the accused devices and services. Defendants urge that this argument was not raised before the Magistrate Judge and should not be considered. *See Lewis v. Ascension Parish School Bd.*, 662 F.3d 343, 348 (5th Cir. 2011) ("This argument is waived because it was not presented to the magistrate judge. . .").

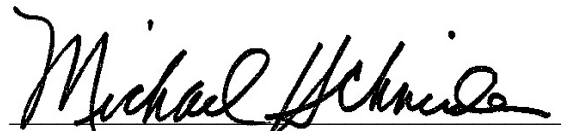
However, even considering Plaintiff's new joinder argument, the Court does not find the Magistrate Judge's May 28, 2013 Order was clearly erroneous or contrary to law. FED. R. CIV. P. 72(a); *see also* 28 U.S.C. § 636 (b)(1)(A). Leave to amend may be denied solely upon undue delay or undue prejudice. *In re Southmark Corp.*, 88 F.3d 311, 314–16 (5th Cir. 1996) (affirming denial of leave to amend based on finding of undue delay and prejudice). Plaintiff does not address the Magistrate Judge's separate findings of undue delay and prejudice, much less show these findings were clearly erroneous or contrary to law.

For these reasons, it is

ORDERED that Plaintiff's Motion for Reconsideration and Objections to Magistrate's Order Denying Leave to File Amended Complaints (6:12-cv-783, Doc. No. 79; 6:12-cv-784, Doc. No. 83; 6:12-cv-792, Doc. No. 67) is **DENIED**.

It is SO ORDERED.

SIGNED this 21st day of August, 2013.

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE